Central Spectrum (M) Sdn Bhd v Sri Ringgit Holdings Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B–02–281 OF 2001
GOPAL SRI RAM, ABDUL KADIR SULAIMAN AND ABDUL AZIZ JJCA
13 APRIL 2005

Land Law — Sale of land — Landlocked property — No access road from property to main road — Whether obligation of vendor to construct access bridge across large monsoon drain to main road — Construction of sale and purchase agreement

The appellant ('the first defendant') was a developer of a land in Pulau Indah, Selangor. The respondent ('the plaintiff') purchased a plot of vacant land in that development. Clause 7.4 of the sale and purchase agreement provided that 'All internal roads … and any other infrastructure work within the plot' shall be constructed by the plaintiff. There was no road connecting the plaintiff's lot to the internal main road. A large monsoon drain had been dug in front of the plaintiff's lot so that there was no actual physical access to it. The plaintiff's case was that the first defendant was under a contractual or alternatively under a statutory obligation to provide access to the subject property. The learned judge of the High Court found the plaintiff's complaint to be justified. The first defendant appealed.

Held, allowing the appeal with costs:

(1) (per **Gopal Sri Ram JCA**, **Abdul Kadir Sulaiman JCA** concurring) Ifthe plaintiff were to succeed at all in this case, it must be able to point either to a term in the sale and purchase agreement imposing a duty on the first defendant to build a road connecting its land to the internal main road or to a statutory provision imposing such a duty. However, having scrutinised the entire agreement, there was no such obligation imposed on the first defendant of the nature suggested by the plaintiff. Clauses 7 and 8 as well as the Third and Fourth Schedules merely required the first defendant to construct the internal roads in the development. They did not in any way impose a further obligation on the first defendant to construct a road over the monsoon drain connecting the plaintiff's lot to the internal main road (see para 3).

(2) (per **Gopal Sri Ram JCA**, **Abdul Kadir Sulaiman JCA** concurring) Section 136 of the National Land Code 1965 merely says that the State Director is not to approve any application for sub-division of alienated land unless the proprietor of the land shall agree in his application for sub-division that he will provide the necessary means of access by making up a road to the designated standard. By its tenor the section directs the State Director to ensure there shall be a satisfactory means of access from any sub-divisional portion to a road or other public

transport system. It is an administrative provision regulating the terms on which sub-division should be granted. It did not impose a duty on the first defendant to build a small stretch of road connecting the plaintiff's land, across the monsoon drain, to the main internal road (see para 4).

(3) (per **Gopal Sri Ram JCA**, **Abdul Kadir Sulaiman JCA** concurring) Inthe present instance, the land marked for development had already been sub-divided into separate sub-divisional portions. Also, the first defendant had provided access from the public highway to the whole of the land (see para 5).

(4) (per **Abdul Aziz JCA**) The respondents' case was that the access to their plot should be in the form of a bridge. The word 'Roads' in the Fourth Schedule was intended to refer to roads of the ordinary type such as are seen in development projects. The construction bridging the drain would not be a road of the ordinary type that was contemplated by the Fourth Schedule to the sale and purchase agreement. If the appellant and the respondent had put their minds to it and had intended that the appellant should provide an access bridge to the respondent's plot, they would have used some express words and not have simply relied on the word 'Roads' to express their intention (see para 12). Therefore, a bridge to the respondent's plot would not fall within the term 'Roads' and that therefore the appellant was not obliged by the sale and purchase agreement to provide the bridge (see para 13).

[**Bahasa Malaysia summary**

Perayu ('defendan pertama') adalah pemaju sebidang tanah di Pulau Indah, Selangor. Responden ('plaintif') telah membeli satu plot tanah yang kosong dalam pemajuan itu. Klausa 7.4 perjanjian jual beli memperuntukkan bahawa 'All internal roads … and any other infrastructure work within the plot' akan dibina oleh plaintif. Tiada jalan menyambungkan lot plaintif dengan jalan besar dalaman. Sebuah parit 'monsoon' besar telah digali di hadapan lot plaintif dan oleh itu tiada akses fisikal ke lot itu. Kes plaintif adalah bahawa defendan pertama mempunyai obligasi secara kontrak atau di bawah statut untuk membina akses ke subjek harta. Hakim Mahkamah Tinggi yang arif mendapati terdapat justifikasi dalam aduan plaintif. Defendan pertama merayu.

Diputuskan, membenarkan rayuan itu dengan kos:

(1) (oleh **Gopal Sri Ram HMR, Abdul Kadir Sulaiman HMR** bersetuju) Sekiranya plaintif ingin berjaya dalam kes ini, ia mesti menunjukkan satu terma dalam perjanjian jual beli yang menyatakan tanggungjawab defendan pertama untuk membina jalan yang menyambungkan tanah itu ke jalan besar dalaman atau kepada satu peruntukan statut yang menyatakan tanggungjawab itu. Tetapi, setelah mengkaji keseluruhan perjanjian itu,

tiada obligasi diletak ke atas defendan pertama seperti yang dicadangkan oleh plaintif. Klausa 7 dan 8 dan juga Jadual Ketiga dan Keempat hanya mengkehendaki defendan pertama membina jalan-jalan dalaman dalam pemajuan itu. Ia tidak dalam apa-apa cara pun meletakkan obligasi keatas defendan pertama untuk membina satu jalan parit 'monsoon' itu untuk menyambungkan lot plaintif kepada jalan besar dalaman (lihat perenggan 3).

(2) (oleh **Gopal Sri Ram HMR, Abdul Kadir Sulaiman HMR** bersetuju) Seksyen 136 Kanun Tanah Negara 1965 hanya menyatakan bahawa Pengarah Negeri tidak boleh memberi kelulusan untuk sebarang permohonan bagi pembahagian tanah yang di kosongkan kecuali tuan punya tanah itu menyetujui dalam permohonannya untuk pembahagian tanah bahawa beliau akan menyediakan semua akses yang perlu dengan membina satu jalan mengikut tahap yang ditentukan. Mengikut maksudnya, seksyen itu mengarahkan Pengarah Negeri untuk memastikan bahawa terdapat akses yang mencukupi dari mana-mana bahagian sub-divisi kesatu jalan atau sebarang sistem pengangkutan awam. Ia merupakan satu peruntukan pentadbiran yang mengawal terma-terma di atas mana pembahagian tanah boleh diberi. Ia tidak meletakan obligasi ke atas defendan pertama untuk membina satu jalan kecil menyambungkan tanah plaintif atas parit monsoon itu kepada jalan besar dalaman (lihat perenggan 4).

(3) (oleh **Gopal Sri Ram HMR, Abdul Kadir Sulaiman HMR** bersetuju) Dalam kes ini, tanah yang ditanda untuk pemajuan sudah pun dibahagikan kepada bahagian-bahagian sub-divisi. Tambahan, defendan pertama telah membina akses daripada lebuh raya awam kepada keseluruhan tanah itu (lihat perenggan 5).

(4) (oleh **Abdul Aziz HMR**) Kes responden adalah bahawa akses kepada plot mereka sepatutnya merupakan satu jambatan. Perkataan 'Roads' dalam Jadual Keempat merujuk kepada jalan biasa yang dibina dalam projek-projek pemajuan. Pembinaan jalan menutup parit bukan satu pembinaan jalan biasa yang dinyatakan dalam Jadual Keempat perjanjian jual beli itu. Sekiranya perayu dan responden berniat untuk bersetuju bahawa perayu yang sepatutnya membina jambatan sebagai akses ke plot responden, mereka terlebih dahulu akan menggunakan perkataan-perkataan tertentu dan tidak bergantung kepada perkataan 'Roads' untuk mengatakan tujuan mereka (lihat perenggan 12). Oleh itu, satu jambatan ke plot responden tidak jatuh di bawah terma 'Roads' dan oleh itu perayu tidak ada obligasi di bawah perjanjian jual beli untuk membina jambatan itu (lihat perenggan 13).]

Notes

For cases on sale of land generally, see 8(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 3551–4086.

Legislation referred to

National Land Code 1965 s 136, (1)(h)

Appeal from: Originating Summons No MT2–24–615 of 1998 (High Court, Shah Alam)

S Ramachandran (Murad Ali and Loo Chay Meng with him) (Abu Hassan & Associates) for the appellant.
Lim Kien Huat (Lee & Lim) for the respondent.

Gopal Sri Ram JCA:

[1] This is a simple case. It concerns the interpretation of an agreement entered into between the parties to this litigation. It also concerns the meaning of s 136 of the National Land Code 1965 ('the Code') on which the plaintiff (the respondent before us) relied to establish its case before the High Court. But first the facts.

[2] The first defendant (the appellant before us) is a developer of 5,860 acres of land in Pulau Indah, Selangor. The plaintiff purchased a plot of land measuring 87,820 square feet in that development. It was vacant land meant for industrial use. But the first defendant did not covenant to construct any building on it. The sale and purchase agreement between the parties is dated 13 June 1995. The plaintiff's case is that the first defendant is under a contractual or alternatively under a statutory obligation to provide access to the subject property. It does not appear to be in dispute that there is access to the development from the public highway. Equally, it is not in dispute that the first defendant has constructed an internal main road within the development. But there is no road connecting the plaintiff's lot to the internal main road. The undisputed documentary evidence shows that there a large monsoon drain has been dug in front of the plaintiff's lot so that there is no actual physical access to it. The plaintiff's complaint is therefore that its property is landlocked without access. The learned judge of the High Court found the plaintiff's complaint to be justified. The first defendant has now appealed to us.

[3] If the plaintiff is to succeed at all in this case, it must be able to point either to a term in the sale and purchase agreement imposing a duty on the first defendant to build a road connecting its land to the internal main road or to a statutory provision imposing such a duty. Now, we have scrutinised the sale and purchase agreement, in particular cll 7 and 8 as well as the Third and Fourth Schedules which we do not intend to reproduce here as they are of no assistance whatsoever to the plaintiff. We have read the agreement as a whole, including the clauses relied on by the plaintiff, and we are unable to find any obligation imposed on the first defendant of the nature suggested by the plaintiff. The aforesaid clauses merely require the first defendant to construct the internal roads in the development. They do not in any way impose a

A further obligation on the first defendant to construct a road over the monsoon drain connecting the plaintiff's lot to the internal main road.

[4] That brings us to s 136 of the Code. The section merely says that the State Director is not to approve any application for sub-division of alienated land unless certain conditions are satisfied. Among these is a condition that the proprietor of the land shall agree in his application for sub-division that he will provide the necessary means of access by making up a road to the designated standard. By its tenor the section directs the State Director to ensure there shall be a satisfactory means of access from any sub-divisional portion to a road or other public transport system, such as a river or railway station. It will be seen at once that the section is of no assistance to the plaintiff despite its learned counsel's sustained reliance on it. It is an administrative provision regulating the terms on which sub-division should be granted. It does not impose a duty on the first defendant to build a small stretch of road connecting the plaintiff's land, across the monsoon drain, to the main internal road.

[5] In the present instance, the land marked for development has already been sub-divided into separate sub-divisional portions. Also, the first defendant has provided access from the public highway to the whole of the land. So there is nothing in the point taken by the plaintiff's counsel and we really think that he has addressed the wrong target. The upshot is that it is for the plaintiff at its own cost to build the limited access road onto its vacant land.

[6] For the reasons already given we came to the conclusion that the learned judge fell into error in finding for the plaintiff. The appeal was accordingly allowed and those orders made that are usually made consequent upon the success of an appeal.

[7] My learned brother Abdul Kadir bin Sulaiman JCA has seen this judgment in draft and has expressed his agreement with it.

Abdul Aziz JCA:

[8] The problem of access to the respondents' plot is as set out in para 2 of the grounds of judgment of my learned brother Gopal Sri Ram JCA. The respondents' case was that it was the duty of the appellants to construct a way spanning the drain and linking the internal main road to the respondents' plot so that there would be access to the plot. That road, whose width is 39 feet, runs within a road reserve whose width is 100 feet. The drain, whose width is 7 metres, runs within a drain reserve whose width is 10 metres. So the access way that the respondents need would span part of the road reserve and the entire drain reserve and would be outside the respondents' plot.

[9] The respondents' plot is an industrial lot and is part of 'the Development', which according to recital D in the sale and purchase agreement was the development of the Master Land by the appellants 'for housing, commercial,

industrial and warehousing purposes'. In selling the plot to the respondents the appellants undertook in cl 7.1 of the sale and purchase agreement to provide the 'Basic Infrastructure' specified in the Fourth Schedule to the agreement. In the Fourth Schedule the Basic Infrastructure is stated as one 'to be provided for the Development'. Among the items specified in the Fourth Schedule is 'Roads and roadside drains'. The learned judge decided that the word 'Roads' included an access way (jalan akses) to the respondents' plot.

[10] In the appeal the appellants gave three reasons for maintaining that they were not obliged by the sale and purchase agreement to construct a means of access to the respondents' plot. Firstly, the appellants said in para 9 of their skeletal submission that the 'bridge or access' was to be constructed by the respondents because there was no requirement in the sale and purchase agreement for them to construct a 'bridge' to the respondents' plot. It was an argument that failed to address the specific question of the meaning of 'Roads' in the Fourth Schedule, that is whether 'Roads' included a bridge that would provide access to the respondents' plot. The appellants did not argue why the word 'Roads', as a matter of interpretation of the word, could not include such an access. I think that the appellants focused on a bridge as the required access because in the High Court, according to the notes of proceedings, the respondents had maintained that the appellants should have constructed a bridge as a form of access.

[11] On the other hand, neither did the respondents argue strenuously why 'Roads' would include a bridge to their plot. By way of submission from the angle of interpretation they merely said in their skeletal submission (p 17): 'Access being a path of way linking one piece of land with another would clearly fall under the definition of 'road'.

[12] In deciding the question I confined myself to the consideration that the respondents' case was that the access to their plot should be in the form of a bridge. I considered that 'Roads' in the Fourth Schedule was intended to refer to roads of the ordinary type such as are seen in development projects. If such a road had to cross a stream or large drain, the part that would provide the crossing could be in the form of a bridge, and I had no doubt that that part would be a part of the road that the appellants were obliged by the sale and purchase agreement to provide. The appellants could hardly be said to have provided a road for the development if they did not also provide for a crossing over the stream or drain because then the road would not serve its purpose as people and vehicles would not be able to use it. But an isolated bridge to the respondents' plot would be just a bridge and would not fall within the concept of the ordinary type of road and neither would it be a part of the main road constructed to make the road passable. It would be incongruous with the ordinary concept of a road. It would be just an isolated structure of, say, metal sheets or concrete slabs of about 10 metres long. The situation may be likened to that of any ordinary lot in a housing development. There will

generally be a small drain running along the front of the property parallel to the road serving the property. To enable a vehicle to get across the drain from the road into the property, something is placed over or across the drain, such as concrete slabs or metal grating. Such a structure can hardly be called a road. Of course, the drain in front of the respondents' plot is not a small drain, but the principle remains the same. The construction bridging the drain would not be a road of the ordinary type that is contemplated by the Fourth Schedule to the sale and purchase agreement. If the appellants and the respondents had put their minds to it and had intended that the appellants should provide an access bridge to the respondents' plot, they would have used some express words and not have simply relied on the word 'Roads' to express their intention.

[13] That was the thinking that led me to conclude that a bridge to the respondents' plot would not fall within the term 'Roads' and that therefore the appellants were not obliged by the sale and purchase agreement to provide the bridge and their appeal should be allowed.

[14] Although it was on that reason that the appellants, in my view, succeeded in the appeal, I shall nevertheless deal with their other two reasons because I am not in agreement with them on those reasons and I feel that, for the possible benefit of the respondents, I ought to state my reasons for disagreeing.

[15] As to the second reason, the appellants, also in para 9 of their skeletal submission, argued that the bridge or access was to be constructed by the respondents because the appellants did not know the type of bridge that would be suitable for the factory to be built by the respondents on their plot. That argument could not affect the question of interpretation whether the word 'Roads' could include an access bridge to the respondents' plot, because if it could, and the appellants were therefore bound to construct the bridge, it should not be difficult for them to ascertain the type of bridge that would meet the respondents' needs.

[16] The appellants' third reason was based on cl 7.4 of the sale and purchase agreement. That clause, among other things, provided that 'All internal roads … and any other infrastructure work within the plot' shall be constructed by the respondents. In para (iii) at p 3 of their supplementary outline of submission, the appellants said this:

> The learned judge erred in not noticing the distinction between *Basic Infrastructure for the Development* as stipulated in the Fourth Schedule which refers to the basic infrastructure for the *Master Land* as per the definition given in the SPA in the Recital D … for the phrase '*Development*' against the stipulation in cl 7.4 'All internal roads…' which refers to private roads to and fro *the Plot* and within *the Plot*.

[17] The significant thing to notice from that paragraph is that, to the appellants, the 'internal roads' that cl 7.4 required the respondents to construct referred also to 'private roads to and fro the Plot'. The appellants were impliedly saying that the means of access to the respondents' plot, being a private road

and a road to and from the plot, would be an internal road which cl 7.4 required the respondents to construct. The appellants did not explain why they said that an access way, which obviously, as I said, would be outside the respondents' plot, would be an internal road.

[18] I may mention that the respondents also relied on cl 7.4 to argue that it was the obligation of the appellants to build the means of access. They argued that since cl 7.4 obliged them to construct only roads within their plot, the linking access, which would be outside their plot, must be provided by the appellants. That was an argument that ignored the need to construe the word 'Roads' in the Fourth Schedule. If the word did not include the access, as in fact I found, the appellants were not bound to provide the access and, unfortunately for the respondents, they would have themselves, with the necessary approvals, to build the access that they need even though cl 7.4 does not oblige them to do so.

[19] As to the respondents' reliance on s 136 of the National Land Code, particularly s 136(1)(h), the reasons in para 4 of my learned brother's judgment essentially coincide with my reasons for rejecting it.

Appeal allowed with costs.

Reported by Loo Lai Mee